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November 26, 2012

via hand delivery

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Attn: CGB Room 3-B431

**Re: Faith at Work Ministry, Inc. Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1062
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Faith at Work Ministry, Inc. ("FAWM") to exempt its program from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹ Consumer Groups oppose the

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (October 26, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1729A1.pdf; *FAWM Petition for Exemption*, Case No. CGB-CC-1062, CG Docket No. 06-181 (May 11, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021921939> ("FAWM Petition"). The Consumer and Governmental Affairs Bureau initially determined that the *FAWM Petition* was deficient. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-1062, CG Docket No. 06-

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petition because it does not sufficiently demonstrate that FAWM sought out the most reasonable rate of captioning services, that it cannot afford to caption its programming, or that it has exhausted all alternative avenues of sponsorship.

Consumer Groups acknowledge FAWM's efforts to broadcast "for the spiritual benefit of the community."² FAWM's requested exemption, however, would deny equal access to its programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensuring that all viewers can experience the important benefits of video programming on equal terms.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific documentation that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"), as added by the Telecommunications Act of 1996 Act ("1996 Act")³ and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),⁴ "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934

181 (August 8, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022004523> ("CGB Letter"). FAWM then filed two supplements. *FAWM Supplement*, Case No. CGB-CC-1062 (August 27, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022022768>; *Fawn Supplement II*, Case No. CGB-CC-1062 (September 5, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022032961>.

² *FAWM Petition* at 3.

³ Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

⁴ Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its July 20, 2012 Report and Order, the Commission formally adopted the analysis set forth in its October 20, 2011 Interim Standard Order and Notice of Proposed Rulemaking.⁵ In doing so, the Commission interpreted the term “economically burdensome” as being synonymous with the term “undue burden” as defined in section 713(e) of the 1934 Act and ordered the Consumer and Governmental Affairs Bureau to continue to evaluate all exemption petitions using the “undue burden” standard pursuant to the Commission’s amended rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ If a petitioner sufficiently demonstrates an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.⁸ Where a petition fails to make either of those showings, it fails to demonstrate that providing

⁵ The *Interim Standard Order* and the *NPRM* were part of a multi-part Commission decision. See *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC. Rcd. 14941 (Oct. 20, 2011) (“*Anglers 2011*”).

⁶ *Report and Order, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket No. 11-175, ¶ 8 (July 20, 2012) (“*Economically Burdensome Standard Order*”). In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁸ See *id.*

captions would be economically burdensome, and the Commission must dismiss the petition.⁹

I. FAWM's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.¹⁰ Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A. The Cost of Captioning FAWM's Programming

To successfully demonstrate that captioning would be economically burdensome, a petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹¹ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petition provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.¹²

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *The Wild Outdoors*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

¹² Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *The Wild Outdoors*, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

FAWM claims that captioning its programming would cost \$425 per week, or \$22,100 per year.¹³ It appears, however, that FAWM did not actually contact any captioning providers, but merely received a subcontracted quote through the distributor of its programming, Argyle Media.¹⁴ Without evidence that FAWM contacted and negotiated with multiple captioning providers, it is impossible to conclude that FAWM made the necessary good-faith effort to seek out the most reasonable rate possible for captioning its programming and is seeking an exemption only as a last resort.

B. FAWM's Financial Status

A successful petition also requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue economic burden.¹⁵

FAWM notes that it is a non-profit entity.¹⁶ But as the Commission has plainly stated, granting petitioners "favorable exemption treatment because of their non-profit status [is] inconsistent with . . . Commission precedent."¹⁷ The Commission has "specifically rejected requests by commenters to adopt a categorical exemption for all non-profit entities based solely on their non-profit status" and has "chose[n] instead to adopt revenue-based exemption standards that . . . focus on the economic strength of each [petitioner]."¹⁸ An entity's non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

FAWM provides a financial statement for the year-long period ending August 21, 2012 that appears to be limited to FAWM's revenues and expenses deriving exclusively

¹³ *FAWM Petition* at 2.

¹⁴ *Id.*

¹⁵ *E.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), *cited with approval in Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁶ *FAWM Petition* at 3.

¹⁷ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18; *see CGB Letter* at 1.

¹⁸ *Id.* at 14,950-51, ¶ 18 (citations omitted).

from “Broadcasting,” and complains that captioning would increase the cost of its television ministry.¹⁹ The specific budget for FAWM’s programming, however, is irrelevant to the Commission’s determination. When evaluating the financial status of a petitioner, the Commission “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”²⁰

Moreover, even assuming for the sake of argument that FAWM’s broadcast budget alone provided a tenable basis for assessing FAWM’s financial condition, it indicates that FAWM’s television ministry operates at an annual surplus of more than \$32,000—more than enough to cover the cost of captioning even at FAWM’s quoted cost of \$22,100.²¹ While FAWM provides no recent information about its general finances, it concedes that it operated at a surplus of \$22,103 in 2010 that could have covered the cost of captioning.²²

FAWM also contends that dedicating its 2010 surplus toward captioning would have “completely eliminate[d] the ministry’s operating capital.”²³ *Id.* Even if true, this statement merely reflects that FAWM would prefer to spend its excess income on something other than captioning, not that it cannot afford captioning, and fails to establish a basis for exempting FAWM’s programming from the FCC’s rules. Moreover, FAWM fails to acknowledge that it in fact carried forward additional “operating capital” of more than \$165,000 in net assets from previous years.²⁴

Although FAWM summarily asserts that it “simply [can] not sustain the significant cost of closed captioning,” FAWM offers no explanation for why it cannot

¹⁹ *FAWM Petition* at 2-3; *FAWM Supplement II* at 5.

²⁰ *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

²¹ *FAWM Supplement II* at 5.

²² *FAWM Petition* at 3.

²³ *Id.*

²⁴ *Id.* at 10.

dedicate the substantial surpluses from its broadcast or overall budgets toward captioning.²⁵ FAWM's petition suggests that FAWM can in fact afford to caption its programming, even at an inflated cost, and is not eligible for an exemption from the Commission's rules.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.²⁶ A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,²⁷ sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.²⁸ While FAWM claims that it has unsuccessfully "sought additional sponsorship sources and other outside sources of revenue for captioning," it offers no specific evidence, documentation, or explanation of its efforts.²⁹ The Commission and the public cannot rely on conclusory, unsupported statements as a basis to conclude that petitioners have diligently explored and exhausted all reasonable avenues of funding captioning.

III. FAWM's Eligibility for Other Categorical Exemption

FAWM claims it should be exempt from the closed captioning rules because it brings in less than \$3 million in revenue annually.³⁰ But as the CGB notes and as FAWM itself concedes, the categorical exemption in 47 C.F.R. § 79.1(d)(12) is applicable only to

²⁵ *FAWM Supplement II* at 2.

²⁶ *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²⁷ See, e.g., *Engel's Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

²⁸ See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

²⁹ See *FAWM Supplement II* at 2.

³⁰ *FAWM Petition* at 4.

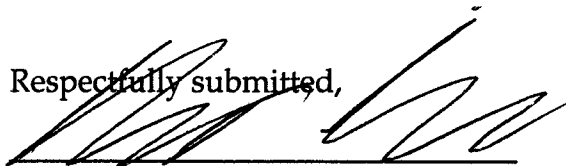
video programming providers responsible for captioning an entire channel of programming, not individual programs.³¹

IV. Conclusion

FAWM has not sufficiently demonstrated that it sought the most reasonable rate of captioning services, that it cannot afford to caption its programming, or that it has exhausted all alternative avenues for funding captioning. Accordingly, we respectfully urge the Commission to dismiss the petition and require FAWM to bring its programming into compliance with the closed captioning rules.

³¹ See *id.*; CGB Letter at 1.

Respectfully submitted,



Blake E. Reid[†]
November 26, 2012

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[†] Counsel thanks Georgetown Law student Jessica Lee for her assistance in preparing these comments.

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CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

Claude L. Stout

Claude Stout
November 26, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on November 26, 2012, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

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A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich
November 26, 2012